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IN THE

Supreme Court of the United States

October Term, 1939.

No. [redacted] 120

HOWARD S. PALMER, JAMES LEE LOOMIS and HENRY B. SAWYER, Trustees of the property of The New York, New Haven and Hartford Railroad Company, Debtor,

Petitioners,

v.

WEBSTER AND ATLAS NATIONAL BANK OF BOSTON, Trustee,

Respondent.

Petition for Writ of Certiorari to the Circuit Court of Appeals for the Second Circuit.

HERMON J. WELLS,
Attorney for Petitioners.

J. H. GARDNER, JR.,
Of Counsel.

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IN THE

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October Term, 1939.

No.

HOWARD S. PALMER, JAMES LEE LOOMIS and HENRY B. SAWYER, Trustees of the property of The New York, New Haven and Hartford Railroad Company, Debtor,

Petitioners,

v.

WEBSTER AND ATLAS NATIONAL BANK OF BOSTON, Trustee,

Respondent.

Petition for Writ of Certiorari to the Circuit Court of Appeals for the Second Circuit.

To the Honorable Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

The undersigned, on behalf of the above-named petitioners, pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit entered on April 16, 1940, reversing the decision of the District Court of the United States for the District of Connecticut.

Opinions Below.

The opinions of the courts below have not yet been officially reported. They will be found at pages 12-19 and pages 185-196 of the record.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on May 16, 1940 (R., p. 197, fol. 589). Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. A., Sec. 347).

Questions Presented.

1. Whether or not the Act of June 18, 1934, 48 Stat. 993 (28 U. S. C. A., Sec. 124a), hereinafter referred to as "Sec. 124a", requires the trustees of the property of a bankrupt lessee railroad company, operating the property of a bankrupt lessor railroad company under Section 77(c)(6) of the Bankruptcy Act (11 U. S. C. A., Sec. 205(c)(6)), hereinafter referred to as "Sec. 77(c)(6)", for the account of the lessor's estate after rejection of the lease, to advance cash out of funds in the estate of the lessee for payment of taxes of a terminal company for which only the terminal company and the lessor are made liable by State law, the payment of such taxes not being immediately necessary to the continued operation of the lessor's property and there being no funds or other property of the lessor from which such taxes can be paid or from which the cash advanced can be recollected.

2. Whether or not Section 65 of the Judicial Code (28 U. S. C. A., Sec. 124), hereinafter referred to as "Sec. 124", requires the same trustees to advance cash for payment of interest on the terminal company's bonds, the other circumstances being the same.

3. Whether or not affirmative answers to the foregoing questions violate the Fifth Amendment to the Constitution of the United States.

Statutes Involved.

The Statutes involved are the Act of June 18, 1934, 48 Stat. 993 (28 U. S. C. A., Sec. 124a), Section 65 of the Judicial Code (28 U. S. C. A., Sec. 124) and Section 77 of the Bankruptcy Act (11 U. S. C. A. 205). The first two Acts and the applicable portion of the third are set forth in the Appendix.

Statement.

In 1888 the Boston and Providence Railroad Corporation let its property to the Old Colony Railroad Company for a term of 99 years (R., pp. 129-143); and in 1893 the Old Colony let its property, including its leasehold interest in the Boston and Providence property, to The New York, New Haven and Hartford Railroad Company, also for a term of 99 years (R., pp. 72-80). At that time the City of Boston was served by the lines of the two lessors and by the New England Railroad Company and the Boston and Albany Railroad Company. After the lease of 1893, the properties of the two lessors were operated by the New Haven as parts of its railroad system.

In 1896 The Boston Terminal Company was incorporated by an Act of the Massachusetts legislature (Massachusetts Acts and Resolves, 1896, Ch. 516)* to provide a union station for passengers on railroads entering the southerly part of the City of Boston.

* The applicable portions of the Act are set forth in the Appendix.

That Act required the Boston and Albany, the New England and the two lessors, whose properties served the area, to use the terminal for all their terminal passenger business in Boston (Secs. 2, 9) and to pay the amounts necessary to cover the Terminal Company's expenses, including its taxes and bond interest, in proportion to their use of its facilities (Sec. 10). The requirements of use and payment were also laid upon the New Haven but were limited to its use of the terminal as lessee of the Old Colony—it owned no property serving Boston.* And later when the Boston and Albany let its property to the New York Central, the Act was amended so as to include the latter, also as "lessee" (Massachusetts Acts, 1921, Ch. 363). In the meantime the New England had been merged into the New Haven (R., p. 16, fol. 46; Massachusetts Acts and Resolves, 1905, Ch. 252; Rhode Island Acts and Resolves, 1915, p. 452, Sec. 4). Thus the New Haven and the New York Central became the only users of the terminal, all other companies enumerated in Section 2 of the charter having been leased or merged. There was no use of the terminal over the former New England line for the period here involved (R., p. 16).

Upon approval on October 23, 1935, of the petition of the New Haven for reorganization there came into the custody of the District Court, as a part of the system of lines operated by the New Haven, the lines of the Old Colony and the Boston and Providence. Continued operation of the system was provided for (R., pp. 44-52) and trustees were appointed (R., pp.

* The four other railroads are named as such in the Act, but the New Haven is described as "* * * the New York, New Haven and Hartford Railroad Company, being lessee of the Old Colony Railroad Company" (Sec. 2).

53-56). Both the Old Colony and the Boston and Providence leases have been rejected by the New Haven and Old Colony Trustees respectively (R., pp. 66, 113) and the New Haven Trustees have continued to operate both lines for the account of the former lessors under orders so providing (*Palmer* v. *Palmer*, 2 Cir., 104 F. (2d) 161, cert. den. 60 S. Ct. 120; *Palmer* v. *Warren*, 2 Cir., 108 F. (2d) 164, affd. sub. nom. *Warren* v. *Palmer*, 60 S. Ct. 865 (1940); R., p. 69, fol. 206; p. 72, fol. 214; pp. 81-82, fols. 242-244; p. 87, fol. 260; p. 92, fol. 276; p. 112, fol. 335), pursuant to Section 77(c)(6) (R., p. 186, fols. 557, 558).* In 1931 the Department of Public Utilities of Massachusetts determined under Section 16 of the Act the proportion of use of the terminal at seventy per cent. for the lines operated by the New Haven (including the Old Colony and Boston and Providence) and thirty per cent. for the line operated by New York Central (Boston and Albany) (R., p. 153, fol. 465). No reapportionment has been made since that time.

The operations by the New Haven Trustees of the two lines formerly leased to the New Haven have been conducted at a large deficit. Indeed, losses incurred in the operation of Old Colony and Boston and Providence properties exceeded $20,000,000 for the period from October 23, 1935, to and including December 31, 1939 (R., p. 13, fol. 37; p. 37, fol. 109; and see R., pp. 97-107, 114-122, 144-153). Payments by the New Haven Trustees of bond interest and taxes of the Terminal Company were swelling the steadily

* The District Court entered its order approving Old Colony's petition for reorganization in the New Haven proceedings on June 3, 1936 (R., pp. 81-83). The Boston and Providence has been in reorganization under Section 77 since August 5, 1938, in the District Court of the United States for the District of Massachusetts (R., pp. 126-128).

mounting advances of cash from the New Haven estate for the account of Old Colony and Boston and Providence at a rate of approximately $800,000 per year (R., p. 6, fol. 18; p. 7, fol. 21; pp. 9, 10, fols. 27, 28; p. 32, fols. 95, 96) and it became apparent that the properties of the two lessors were not sufficient security to warrant the diversion of additional cash from the New Haven estate without jeopardy to the New Haven's own creditors (R., p. 187, fol. 560). Accordingly, the New Haven Trustees filed a petition on October 19, 1939, stating that in their opinion they should make no further advances of cash for payment of Boston Terminal taxes and bond interest for the account of Old Colony and Boston and Providence estates (R., p. 10, par. 7). The District Court, after hearing, agreed (R., pp. 12-19) and entered its order directing that the payments should be withheld (R., p. 20).* The Circuit Court of Appeals reversed because it construed Section 124a, Section 124 and Section 77(c)(6) as requiring these payments to be continued (R., pp. 193-196), despite the fact they were not immediately necessary to continued operation of the Old Colony and Boston and Providence properties (R., p. 192, fol. 575; p. 17, fol. 50) and despite the further fact that the cash for the payments would be diverted from the New Haven's estate without prospect of its ever being recovered (R., p. 187, fol. 560; pp. 193-194, fols. 579, 580; p. 196, fol. 587; p. 13, fol. 38).

The decision turns on Sections 124a and 124. The Court of Appeals' construction of these sections was urged upon it not by the appellants (who did not even

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* On petition of holders of bonds of the Terminal Company filed November 3, 1939, proceedings for its reorganization under Section 77 of the Bankruptcy Act were instituted in the United States District Court for the District of Massachusetts (Docket No. 63870).

cite them), but by counsel for the City of Boston in a brief *amici curiae* offered just before argument. Petitioners opposed the filing of this brief because the City, although appearing in the trial court, had failed to appeal. They asked opportunity to reply should the brief be received. The Court denied this request but reserved ruling on acceptance of the brief and did not announce such ruling until decision of the case.

Specification of Errors.

The Circuit Court of Appeals erred:

(1) In reversing the order of the District Court.

(2) In holding that petitioners must advance cash for payment of taxes and bond interest of The Boston Terminal Company.

(3) In so construing and applying Section 124a, Section 124 and Section 77(c)(6) as to require petitioners to advance cash for payment of said taxes and interest out of funds in the New Haven estate.

(4) In holding that its said construction and application of said statutes did not violate the Fifth Amendment to the Constitution of the United States.

(5) In violating said amendment by requiring petitioners to advance cash for payment of said taxes and interest out of funds in the New Haven estate.

Reasons for Granting the Writ.

In holding that petitioners must make payment from New Haven funds of taxes and bond interest of the Terminal Company, the Circuit Court of Appeals

decided important questions of federal law which have not been, but should be settled by this Court (Rule 38(5)(b)).

> *(1) No court other than the court below has interpreted Section 124a alone or in connection with Section 77(c)(6) so as (a) to enlarge beyond the requirements of State law the property out of which State taxes are payable, or (b) to make the assets of one estate liable for the payment of taxes of another separate estate. This the court below did although concededly the payment of such taxes is not immediately necessary to continued operation and if paid cannot be re-collected from the estate for the account of which operation is being conducted.*

Heretofore, under Section 124a, this Court has decided merely that a bankrupt estate, operated by a trustee, is liable for taxes that the State could have collected from *the particular business or property upon which the tax is laid* if the bankrupt instead of the trustee had been operating it (*Boteler* v. *Ingels*, 308 U. S. 57 [1939]); and a similar result has been reached by the Circuit Courts of Appeal for the Eighth and Ninth Circuits (*Board of Directors of St. Francis Levee District* v. *Kurn*, 8 Cir., 98 F. (2d) 394, 397 [1938], cert. den. 305 U. S. 647 [1938]; *Thompson* v. *Louisiana*, 8 Cir., 98 F. (2d) 108, 111, 112 [1938]; *Ingels* v. *Boteler* (see *supra*), 9 Cir., 100 F. (2d) 915, 919, 920 [1938]). The present case is different. Here the liability is that of the former lessor companies and the Terminal Company (all of which are in bankruptcy), not the New Haven estate. The liability is not attributable to any New Haven

business conducted for the New Haven estate by petitioners or to any New Haven property. Instead it is attributable to business conducted "for the account of" the estates of Old Colony and Boston and Providence (Sec. 77(c)(6)). Moreover, payment of the taxes in question is admittedly not presently necessary to continued operation of the lessors' properties (R., p. 192, fol. 575) which is being conducted now, as in the past, without interruption; and payment of the taxes would represent a cash loss to New Haven creditors that could not be re-collected from the estates which are liable for the taxes and for which operation is being carried on (R., p. 187, fol. 560; p. 13, fol. 38). This requirement of payment is made irrespective of the fact that ultimate payment of the taxes to the State is assured through the lien accruing upon the property against which the tax is laid; and irrespective of the fact that petitioners have rejected the Old Colony lease and are operating the property of that company and the Boston and Providence solely because of the orders of the District Court in the absence of operating ability of those companies.

No decision of this Court or of any court other than the court below has construed Section 124a alone or in conjunction with Section 77(c)(6) to enlarge beyond the requirements of State law the fund out of which State taxes are payable. But the court below held that Section 124a required petitioners to pay Terminal Company taxes out of any property found in their hands even if such property belonged to others and was no more applicable by State law to the payment of the taxes than are petitioners' own

private dwellings.* This novel holding presents important questions of federal law under Section 124a and under Section 77(c)(6).

(2) *No court other than the court below has interpreted Section 124 alone or in connection with Section 77(c)(6) so as (a) to require payments (in this case, bond interest) not immediately necessary to operation; (b) to require the payment from the trust funds of one estate of bond interest due from another separate estate from which it cannot be re-collected, or (c) to grant a preference to the creditors of one estate in the assets of another estate.*

Section 124 differs from Section 124a in that it lays down requirements as to management and operation, not payment. Accordingly, this Court has held that a federal receiver or trustee is bound by valid State laws relating to the operation of trains at a specified rate of speed (*Erb* v. *Morsch*, 177 U. S. 584 [1900]), the abandonment of railroad service (*Palmer* v. *Massachusetts*, 308 U. S. 79 [1939]) and the giving of a bond to observe the requirements of State laws as to operation, including a bond for taxes (*Gillis* v.

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* In so holding the court below failed to cite its earlier opinion, *Dulberg* v. *Zankel*, 2 Cir., 67 F. (2d) 534, 537, handed down before Section 124a was passed, and announcing a general rule, said to be "self-evident", that deficits from the operation of unprofitable property in a receiver's hands should not be met from the earnings of separate property also operated by the receiver. The court there said:

"Assuming that current taxes assessed against property of Nestwood Estates, Inc. [owner of the unprofitable property] would be entitled to priority over creditors of its receiver in the distribution of property *belonging to it*, it must appear that property of *that corporation* is in the receiver's hands for distribution before any such question of priority can arise." (Italics supplied.)

California, 293 U. S. 62 [1934]). Although each of these decisions cost the receiver or trustee whatever cash the particular operation required, nevertheless the obligation principally dealt with was one of physical operation rather than the payment of interest on securities. Thus in *Palmer* v. *Massachusetts*, *supra*, the New Haven Trustees necessarily were forced to incur whatever extra expense was entailed by the continued operation of the unprofitable stations they were forbidden to abandon without State authority.

But the present case does not involve the payment of expenses necessary to continued operation. Admittedly operation into the terminal for the account of Old Colony and Boston and Providence estates will continue whether or not the Terminal Company bond interest is paid.* No decision of this Court or of any court other than that below has dealt with the obligation of receivers or bankruptcy trustees operating property of other estates than their own and for the account of such other estates to pay from their own funds expenses not immediately necessary to the continued operation of such other estates which they can never re-collect.

The novelty of the decision below is emphasized by the fact that it requires petitioners to pay bond interest of the Terminal Company during the New Haven reorganization proceedings. Even if the Massachusetts Act of 1896 had required the New Haven to guarantee for all time the punctual payment of such interest, that obligation would be no more enforceable after bankruptcy than any other New

*Such operation is in fact continuing despite petitioners' compliance with the order of the District Court below. They are paying currently all expenses necessary to continued operation (R., p. 10, pars. 7, 8; p. 192, fol. 574).

Haven guaranty. Instead it would be dealt with as a general claim in the New Haven plan. And if liability for the interest did not survive the Old Colony lease, that would end the matter so far as the New Haven estate is concerned. But the court below did not even stop to consider whether the New Haven Company was legally liable to make payment under State law. It held that such a step was unnecessary (R., p. 196) and decreed payment from funds in the New Haven estate despite the fact that the New Haven's own bondholders and the holders of obligations guaranteed by the New Haven are still waiting for payment of interest (R., p. 13, fol. 38) which is clearly due by the law of all States in which the New Haven properties are operated.

It is evident that one of the purposes of the Bankruptcy Act is to prevent preference and to provide for the fair distribution of the assets of a debtor. This is, of course, true of the reorganization sections of the Act, even though the property distributed is usually in the form of the securities of the new corporation rather than in the property of the debtor. The interpretation made by the court below of Section 124, taken in connection with Section 77(e)(6) has the effect of providing for the payment of interest on the bonds of one debtor out of funds belonging to the estate of a second and separate debtor, in preference to the claims for principal and interest of the mortgage bondholders of the second debtor.

The ruling of the court below based squarely, as it is, upon Section 124 and Section 77(e)(6) of the Bankruptcy Act, merits the attention of this Court because of its novelty and importance.

(3) *The interpretation made by the court below of Sections 124 and 124a, taken in connection with Section 77(s)(6), raises constitutional questions which should receive the attention of this Court.*

Taking the record as we find it, there is no need here to consider whether or not the Fifth Amendment to the Constitution of the United States would be violated by Congressional legislation requiring the New Haven estate to pay such *necessary* expenses of operation of Old Colony and Boston and Providence estates as *could ultimately be recovered* out of their properties. Although such a question probably would be appropriate for consideration by this Court, the present record presents a question even more serious and important. In this case the court below so construed and applied Sections 124a and 124 in conjunction with Section 77(c)(6), as to require the New Haven estate to pay even the expenses of Old Colony and Boston and Providence that are *not necessary* to their continued operation and *cannot be recovered* from the operated properties. And in the concluding paragraph of its opinion it stated:

"In the view which we have taken of the case, it is not necessary for us to decide whether the provisions of the Massachusetts Act of 1896, imposing direct obligations on the New Haven, 'being lessee' of the Old Colony, continue to bind the New Haven after it had rejected the lease. In any event, the New Haven trustees, while operating the railroad pursuant to the court's order under Sec. 77(c)(6), are bound to pay the taxes and the interest charges for the reasons stated above" (R., p. 196, fols. 586, 587).

Thus the court held that petitioners must pay the charges from New Haven funds whether or not the New Haven Company was legally liable for them.

In making provision for continued operation through Section 77(c)(6) Congress exercised powers granted to it by the Constitution to regulate commerce among the several States (Article I, Section 8, Clause 3) and to establish uniform laws on the subject of bankruptcies (Article I, Section 8, Clause 4); *Warren* v. *Palmer*, 60 S. Ct. 865 (1940); see also *Continental Illinois National Bank & Trust Co.* v. *Chicago, Rock Island & Pacific R. Co.*, 294 U. S. 648, 671, 672 (1935). But these powers, like other great substantive powers of Congress, are subject in their exercise to the Fifth Amendment which forbids Congress to deprive any person of life, liberty or property without due process of law or to take private property for public use without just compensation (*Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555, 589 (1935); *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 336 (1893); *Kuehner* v. *Irving Trust Co.*, 299 U. S. 445, 451 (1937); *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 347 (1935); *Chicago, Rock Island & Pacific R. Co.* v. *United States*, 284 U. S. 80, 96, 97 (1931)).

Decisions of this Court have placed beyond question the test it will apply in determining the validity of legislation in this connection. The requirement is:

> "that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained."

Nebbia v. *New York*, 291 U. S. 502, 525 (1934);
Railroad Retirement Board v. *Alton R. Co.*, *supra*, 295 U. S. 330, 348, Note 5 (1935);
Heiner v. *Donnan*, 285 U. S. 312, 326 (1932);
Chicago, Rock Island & Pacific R. Co. v. *United States*, *supra*, 284 U. S. 80, 96, 97 (1931);
Great Northern R. Co. v. *Washington*, 300 U. S. 154, 160 (1937);
Nashville, C. & St. L. Ry. v. *Walters*, 294 U. S. 405, 429 (1935);
Chicago, M., St. P. & O. R. Co. v. *Holmberg*, 282 U. S. 162, 167 (1930);
Liggett Co. v. *Baldrige*, 278 U. S. 105 (1928).*

In the present case "the object sought to be attained" by Section 124 and by Section 77(c)(6) is continued operation of Old Colony and Boston and Providence properties into the terminal during reorganization proceedings, and the "object sought to be attained" by Section 124a is to subject to taxes *the business conducted for and the property of those companies* during such proceedings. The "means selected" by the legislation, as construed by the court below, were the payment of current Terminal Company taxes and bond interest out of another estate, although such payment was found not to be immediately necessary to operation. Accordingly, petitioners are here seeking an authoritative determina-

* The same test is applied to the several states under the Fourteenth Amendment (*Nebbia* v. *New York*, *supra*, 291 U. S. 502, 525 (1934); *Heiner* v. *Donnan*, *supra*, 285 U. S. 312, 326 (1932)). Since this Court cites cases interchangeably under both amendments (*Railroad Retirement Board* v. *Alton R. Co.*, *supra*; *Heiner* v. *Donnan*, *supra*) we do likewise herein.

tion whether or not the legislation as construed below in the light of the facts of record discloses any "real and substantial relation" between the means adopted and the object sought to be attained. They are also seeking an authoritative determination whether or not such legislation as construed and applied is "unreasonable, arbitrary or capricious" in requiring advances of cash that cannot be recovered if advanced, and the payment of which is not immediately necessary to continue the operations involved.

The ruling of the court below that petitioners must make these payments even if the New Haven Company is now under no legal liability to do so is a further circumstance not to be lost sight of in assessing the nature of the exaction required of the New Haven's secured and unsecured creditors. But even if the New Haven Company is liable for the charges, it is in bankruptcy, and present payment by petitioners, if made at all, must be made from trust funds. Any preference in these funds that is granted to the Terminal Company must be justified or condemned under the Fifth Amendment, by recourse to the facts and decisions already noticed (see *Doty* v. *Love*, 295 U. S. 64, 74 (1935)). The fact that payment was exacted without regard to liability serves to emphasize the peremptory and rough-shod operation of the statutes as interpreted below and raises further doubt as to their constitutionality.

These doubts cannot be resolved in favor of validity by suggesting, as did the court below (R., p. 191, fol. 572) that petitioners can relieve themselves of the charges by seeking and obtaining appropriate authority to abandon all or a part of the operation into the terminal. The issue is not whether there shall be

payment or abandonment. Instead it is: Must petitioners advance cash for payment of the charges out of the New Haven estate? Indeed it seems difficult to believe that any appropriate authority, State or federal, would find that public convenience and necessity permitted abandonment of the terminal because charges for interest upon its bonds are out of proportion to the business transacted on its property. To do so would burn the ship to get rid of the rats. The obvious remedy here is reorganization, not abandonment. This process, as noted, has already been initiated. And where a middle course (immediate reorganization) is feasible, the constitutionality of a statute cannot be sustained merely by suggesting an impracticable alternative,—yet the court below did just this. And in so doing it at least gave rise to a possibility that payment of the charges would place the Terminal Company in a position to obtain dismissal of its reorganization proceedings whether or not it is over-capitalized.

CONCLUSION.

In shifting the burden of Terminal Company taxes and bond interest to the New Haven creditors the opinion below dealt with questions of interpretation of Sections 124a, 124 and Section 77(c)(6), and questions as to their constitutionality under the Fifth Amendment that never have been but should be passed upon by this Court. Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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Of Counsel.

Appendix.

Act of June 18, 1934, 48 Stat. 993 (28 U. S. C. A., Sec. 124a):

"Sec. 124a. STATE TAXATION; BUSINESS CONDUCTED BY RECEIVERS, TRUSTEES OR OTHER COURT OFFICERS SUBJECT TO.

Any receiver, liquidator, referee, trustee, or other officers or agents appointed by any United States court who is authorized by said court to conduct any business, or who does conduct any business, shall, from and after June 18, 1934, be subject to all State and local taxes applicable to such business the same as if such business were conducted by an individual or corporation: *Provided, however,* That nothing in this section contained shall be construed to prohibit or prejudice the collection of any such taxes which accrued prior to June 18, 1934, in the event that the United States court having final jurisdiction of the subject matter under existing law should adjudge and decide that the imposition of such taxes was a valid exercise of the taxing power by the State or States, or by the civil subdivisions of the State or States imposing the same."

Section 65 of the Judicial Code (28 U. S. C. A., Sec. 124):

"Sec. 124. (Judicial Code, section 65.) MANAGEMENT OF PROPERTY BY RECEIVERS. Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or man-

ager shall manage and operate such property according to the requirements of the valid laws of the state in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall willfully violate any provision of this section shall be fined not more than $3,000, or imprisoned not more than one year, or both."

Section 77(c)(6) of the Bankruptcy Act (11 U. S. C. A., Sec. 205(c)(6)):

"(6) If a lease of a line of railroad is rejected, and if the lessee, with the approval of the judge, shall elect no longer to operate the leased line, it shall be the duty of the lessor at the end of a period to be fixed by the judge to begin the operation of such line, unless the judge, upon the petition of the lessor, shall decree after hearing that it would be impracticable and contrary to the public interest for the lessor to operate the said line, in which event it shall be the duty of the lessee to continue operation on or for the account of the lessor until the abandonment of such line is authorized by the Commission in accordance with the provisions of section 1 of Title 49."

Massachusetts Acts and Resolves, 1896, Ch. 516:

"Sec. 2 [as amended by Acts 1921, Ch. 363]. The capital stock of said corporation shall be five hundred thousand dollars, and the Boston and Albany Railroad Company, its lessee, the New York Central Railroad Company, the New England Railroad Company, the Boston and Provi-

dence Railroad Corporation, the Old Colony Railroad Company, and the New York, New Haven and Hartford Railroad Company, being lessee of the Old Colony Railroad Company, may each subscribe for or purchase and hold one fifth portion of the said capital stock. The corporation may by by-laws regulate the terms and conditions upon which its stock may be transferred. All said capital stock shall be paid in in cash by said railroad companies before the corporation takes any land under the provisions of this act."

"Sec. 9. All said railroad companies upon the completion of said station shall use the same, and the terminal facilities provided by said terminal company on the land herein-above authorized to be taken, for all of their terminal passenger business in Boston, instead of the passenger terminals now used by them, and the supreme judicial court, or any justice thereof, shall have jurisdiction in equity to enforce this provision; but said terminal company may contract with either of said railroad companies for the use of such separate and specified portion or portions of the terminal station hereinafter provided for, as may be reasonably necessary for their respective use.

"Sec. 10. Said railroad companies hereby required to use said union station shall pay to the terminal company for such use, in monthly payments, such amounts as may be necessary to pay the expenses of its corporate administration and of the maintenance and operation of said station, and of the facilities connected therewith and owned by said terminal company, including insurance and all repairs, all taxes and assessments

which may be required to be paid by said terminal company, the interest upon its bonds or other obligations issued under the provisions of this act as the same shall become payable, and a dividend, not to exceed four per cent. per annum upon its capital stock. Each of said railroad companies shall pay for such use of said station and facilities in the proportion in which it has the use thereof, the same to be fixed by the written agreement of all of said railroad companies before the completion of said station; and in case they fail thus to agree, the board of railroad commissioners shall determine such proportions upon the application of said terminal company or of any of the railroad companies. Said proportions as thus fixed, either by agreement or by the decision of the board of railroad commissioners, may be revised and altered from time to time, either by the written agreement of all of the railroad companies at any time, or by the board of railroad commissioners upon like application at intervals of not less than three years. The decisions of the board of railroad commissioners fixing said proportions of payments shall be final and binding upon all of said railroad companies, and the payments required to be made by them respectively to said terminal company either by such agreement or decisions shall be deemed a part of their operating expenses, and the supreme judicial court or any justice thereof shall have jurisdiction in equity to compel such payments to be made, either by mandatory injunction or by other suitable process."